

MANAGEMENT GUIDELINES FOR HANDLING GRIEVANCES

STATE OF WISCONSIN
OFFICE OF STATE EMPLOYMENT RELATIONS
BUREAU OF LABOR RELATIONS
345 WEST WASHINGTON AVENUE
PO BOX 7855
MADISON, WI 53707-7855

(608) 266-7212

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INTRODUCTION

This handbook is designed to assist supervisors in handling grievances. It is divided into three sections. The first section is a brief introduction about the purpose of a grievance procedure. The second section provides an overview of how the state grievance procedures operate. The third section provides a checklist format for the specific steps a supervisor should take to effectively handle a grievance.

This handbook does not deal with the subject of imposing discipline. It is concerned only with the steps to be followed when handling a grievance which has been filed by an employee, a group of employees, or the union.

SECTION 1

WHY A GRIEVANCE PROCEDURE?

A formalized grievance procedure is included in all collective bargaining agreements with state employees for the purpose of working out disagreements that may arise with the union and employees about what the contract language means or how the contract language is applied to specific situations.

THE GRIEVANCE PROCEDURE IS FOR WORKING OUT DISAGREEMENTS. Since a collective bargaining agreement, or “contract,” covers a wide variety of subjects regarding wages, benefits, hours and conditions of employment, disagreements about what the language really says or how it should be applied to a particular problem are likely to occur. The grievance procedure provides a **process** for supervisors, managers, employees and the union to **discuss disagreements** about how the contract is being observed and to work out solutions in a deliberate and reasoned manner, without shutting down the workplace over the dispute. It is an important process. Employees know that they can address their concerns about their contract rights to their supervisors and managers; that the management will sit down, listen, and consider the concerns; and that an answer will be given.

The answer to any particular grievance may or may not be acceptable to the employee or the union. The grievance procedure, however, is designed to assure that the concern is heard and that it is discussed in a civil manner by everybody. In the end, if the employee and the union do not agree with management’s view about what the contract allows, they can turn to arbitration for a final resolution of the disagreement.

GRIEVANCE PROCEDURE IS LIMITED TO CONTRACT RIGHTS ONLY. The formal grievance procedure is intended by management and the union to deal with disagreements about *contract rights*. Combined with arbitration, the formal grievance procedure is a very powerful enforcement mechanism for settling disputes about the contract. Thus, the formal grievance procedure is not intended to be used for complaints that have nothing to do with a right or benefit provided in the contract.

COMMUNICATION AND PROBLEM-SOLVING ARE STILL IMPORTANT OUTSIDE THE GRIEVANCE PROCEDURE. The limitation of the formal grievance procedure to *contract rights* does not mean that employee concerns or complaints about other matters should be ignored by supervisors and managers. It only means that in those cases where there is no contract concern, there is no need for the forms and meetings required by the formal grievance procedures, and they should not be used. The supervisor and manager have greater flexibility in dealing with problems that do not involve the enforcement of a contract right. Communication, however, is still just as important in these instances as elsewhere. Your supervisory skill as a problem-solver is still vitally needed. Listening, talking, thinking, and solving problems, is not limited to the formal grievance procedure.

SECTION 2

A BRIEF OVERVIEW OF HOW A STATE GRIEVANCE PROCEDURE OPERATES

An employee or union representative believes that an action or decision by a first line supervisor or by somebody else in management violates a provision of the contract. The employee or the union files a “grievance,” which is a written complaint that management violated a specific provision of the contract. There will be various requirements stated in the contract about time limits for filing and other procedures that must be followed. The written grievance will be filed at a “first step.”

Each of the grievance procedures in state collective bargaining agreements can be divided into two parts: (1) the “lower steps,” which can consist of anywhere from one to three steps, and (2) arbitration.

THE “LOWER STEPS.” The lower steps of the grievance procedure are a **management review** of its own action that the employee or union says is in violation of the contract. In other words, the lower steps are an opportunity for management to reconsider what it did, before it might be told by somebody else (usually an arbitrator) that it could not do that under the contract.

Equally significant, the lower steps of the grievance procedure provide the employee and the union with a right to present their complaint to management and get an answer back, after an opportunity for discussion.

ARBITRATION. Not all disagreements are settled by the two sides. When that happens, the argument can either fester or somebody else steps in and makes a final decision. In the case of resolving disagreements about contract rights, the state collective bargaining agreements provide for arbitration if management, the employee and the union cannot work out the disagreement. In arbitration, a **neutral third party**, selected in some fashion by the two sides, listens to their positions, evidence and arguments, and then decides who is right under the contract. If the arbitrator decides that a contract right was violated, he/she can order an appropriate remedy.

THE NUMBER OF LOWER STEPS. State contracts provide for either a three or four-step grievance procedure. The objective is twofold: (1) to move the grievance along for review by supervisors and managers responsible for operations affected by the decision or action that has been challenged; and (2) to encourage the opportunity for working out the grievance at the earliest possible level. Thus, where agencies or operations have fewer levels of management, fewer steps for the grievance procedure may be provided in the contract.

FOLLOWING THE LOWER STEPS. Each supervisor and manager should review and be familiar with the grievance steps provided in the collective bargaining agreements for the employees they manage.

“PRE-FILING STEP.” (For WSEU, WEAC and UPQHC Contracts) The “pre-filing step” has been created in order to **encourage resolution of contract problems at the earliest possible level** by providing the local union representative and the employee the opportunity to **meet informally** with the first line supervisor to solve contract problems without requiring the formality of first filing a written grievance.

Under the “pre-filing” step, the union representative contacts the supervisor to schedule a meeting to discuss a specific contract problem. The meeting is intended to allow free and open discussion of the issue and to focus on “problem-solving” and “conflict resolution,” rather than on who is right and who is wrong.

If the supervisor, employee and union representative cannot work out the problem at the pre-filing meeting, the employee and union can still file a formal, written grievance. ***Importantly, the pre-filing step does not waive or suspend the time limits for filing a formal, written grievance.***

When holding a pre-filing meeting, the supervisor should keep discussions informal. The employee and union do not need to provide any written explanation for pre-filing. The supervisor may maintain a “**pre-filing log**” to document that the pre-filing step was accommodated. In the log, the supervisor need only note the time and date of the meeting, the subject of the meeting, and who was present.

STEP ONE. In almost all state collective bargaining agreements, the first step of the grievance procedure is with the **immediate supervisor** of the employee or a designated agency representative. The immediate supervisor is designated for step one in order to encourage working out the grievance at the **earliest level**. This may not always be possible, since some grievances can involve actions or decisions that are not within the control of that supervisor. In such situations, the supervisor can still gather information in the grievance process, or a decision can be made, with the advice of the local personnel director, to waive that step of the procedure.

Upon receiving a first step grievance, the supervisor/ representative examines it to ensure that it is in compliance with all **procedural requirements (time limits, subject matter, etc.)** set by the contract. The supervisor/representative then conducts a **preliminary review** of the facts, issues, departmental policies or practices, and the contract language. A **meeting** is held with the grievant, his/her designated grievance representative, and the union’s grievance representative if the grievant has designated someone else as his/her representative. The meeting is held in order to obtain information and clarify the facts. (Section 2 of this Booklet details the recommended procedure for the supervisor to follow in handling a grievance.) After completion of the meeting, the supervisor/representative evaluates all of the facts and arguments in light of the provisions of the contract and makes a **decision** regarding the grievance.

If the contract has, indeed, been violated, the grievance should be **granted** and an appropriate solution, or “**remedy**,” for the mistake should be provided to the employee. An employee will request a remedy as part of the grievance. If the requested remedy is reasonable, it should be granted as well. If the requested remedy is not reasonable, a different one should be provided that corrects the management mistake. (Sometimes the employee or union may not be satisfied with the grievance remedy. Of course, they are free to disagree, but a management mistake about a contract right does not entitle the employee to any remedy he/she requests, no matter how unreasonable.)

The supervisor/representative should be certain that management has violated the contract before granting the grievance, since providing a remedy as part of that grievance can result in the establishment of a **practice** for handling the same issue in the future. If the supervisor is *truly uncertain* about whether a contract violation occurred, he or she should give the *benefit of the doubt to management* and deny the grievance, which can still be reviewed at higher steps if the grievant and union appeal it further.

If the contract has not been violated, the grievance should be **denied**. Denying a grievance does not mean that you cannot change your way of doing things in the future. Denying a grievance does not even mean that you cannot correct a mistake that may turn out to have nothing to do with contract rights. Denying the grievance just means that neither the employee nor the union can require management to approach a matter of wages, benefits, hours or conditions of employment in a certain manner if it is not required by the contract.

Sometimes, a grievance will challenge an action or subject matter that is **not grievable** under the contract, such as a denial of a reclassification. (Reclassification actions are not addressed in the contract and, therefore, they are not covered by the contract. Also, they are prohibited subjects of bargaining.) If the supervisor recognizes that the subject identified in the particular grievance is actually not grievable, he or she should usually still hold a grievance meeting to hear the grievant’s and/or union’s view about why they think the matter is a grievable subject. Unless they provide a convincing explanation (and check it with your Personnel or Labor Relations Office), the grievance should thereafter be “denied as not identifying a grievable subject under the contract.”

A grievance which can be denied by management at Step One (and any subsequent steps) can be **appealed to the next higher step**, if it is done by the employee or the union **within the time limits** set by the contract.

STEPS TWO AND THREE. Steps Two and Three follow a similar pattern with **higher levels of management** becoming involved at each progressive step. (WSEU only has a Step Two.) At Step Two, a designated agency representative, usually a bureau director or division administrator, represents management and meets with the grievant and his or her designated grievance representative. At Step Three, a department head or his/her designee (often a central personnel or employment relations specialist) represents management. At this level, **full-time union staff employees may also become involved** in dealing with management regarding the grievance.

FINAL STEP: ARBITRATION. The final step of the grievance procedure is arbitration, if the employee and union are not satisfied with management's answer at the lower steps. Arbitration involves a hearing before an impartial third party who makes a **final and binding decision about the application of the contract language** to the grievance.

The **arbitrator for each case is chosen jointly by the employer and the union** according to a process specified in the contract. Arbitrators who handle state grievance cases are selected from various available panels or those supplied by the Wisconsin Employment Relations Commission. They have expertise in matters of labor law or contract interpretation.

At the arbitration hearing, the state is represented by an attorney or labor relations specialist from the Office of State Employment Relations, Bureau of Labor Relations, while the union is represented by an attorney or union field representative.

Arbitration is a process of the admission and examination of evidence, in the form of witness testimony and documentation, at the hearing conducted by the arbitrator. A **full arbitration hearing** is like a court trial in many respects. Each side has an opportunity to present and cross-examine witnesses under oath and introduce documents or other evidence in support of its position. During the hearing, the arbitrator takes notes and, in some cases, a court reporter is used to prepare a full transcript of the proceedings. After the testimony is concluded, both sides have the opportunity to present verbal closing argument or to submit written briefs summarizing their cases to the arbitrator. Generally, the arbitrator will send a written decision to both parties within a few weeks. In accordance with the contract, the arbitrator's decision on the grievance is final and binding on both parties. A decision as a result of a full arbitration hearing can also have implications for setting a **precedent** in the interpretation of a contract provision that may have to be followed in all similar cases in the future. Thus, full arbitrations must be carefully considered.

Full arbitration hearings can be very complex and lengthy. Although much like a court trial, certain informalities make it a relatively more flexible, less expensive and less formal process than civil litigation in courts. In arbitration, there is no right of prehearing discovery, like depositions, and the rules of evidence are somewhat relaxed.

In addition to full arbitration, seven (7) contracts currently provide for even more informal arbitration proceedings. These arbitration proceedings are called **expedited arbitration** and **umpire arbitration**. In expedited arbitration, each side is allowed to present only two witnesses. In umpire arbitration, no formal testimony is taken; instead, all the facts are stipulated by both sides or provided in discussions between the arbitrator and union and employee representatives. In both expedited and umpire arbitrations, there are no court reporters or transcripts and no briefs. Anywhere from four to eighteen cases a day can be heard by the same arbitrator. The arbitrator's decision is given within a few days and while the decisions are final and binding for the specific grievance, they **cannot set a precedent** for any other cases.



SECTION 3




HANDLING A GRIEVANCE

The following checklists are based on a supervisor handling a grievance at the first step, but the points outlined here can, and should, be used by managers handling any step of the grievance procedure.

UPON RECEIPT OF THE GRIEVANCE







An employee initiates the formal grievance procedure by presenting a written grievance on the required form to the employee's supervisor. The format of the grievance must be as specified in the contract. Therefore, the supervisor should consult the contract and examine the grievance form to ensure that the employee (grievant) has complied with the procedural requirements in the contract.

-  1. **Check if the form is signed by a covered employee.** If the employee is not covered by the contract, return the grievance form to the employee with the notation: "not a covered employee." Only those employees covered by a union contract can utilize the grievance procedure specified in that contract.
-  2. **Check for timeliness.** If the grievance has not been filed within the time limits, make a note of it, and ask at the grievance meeting whether there is any reason. In most cases, a late grievance should be "denied as untimely." *Check with your personnel department before making any exceptions.* (Grievances must be filed within a certain time limit after the employee knew, or should have known, of the problem. Check the contract for specific time requirements.)

-  3. **Check to see if it is filed at the right step.** If it is not, identify the contract section which defines the correct step, and notify the grievant or union representative. (Most grievances are appropriately filed at the first step of the procedure; however, some contracts require that grievances involving certain subjects begin at higher steps in the process. For example, major discipline cases involving suspension or discharge generally begin at Step Two. *Refer to the appropriate contract to ensure that the grievance is filed at the right step.*)
-  4. **Check to see if the union representative was notified.** If the grievance form is not cosigned by a union representative who is a “designated grievance representative” under the contract, then contact the representative and inform him or her of the grievance. (*By law, the union has a right to be present at any meeting to discuss contractual grievances.* Lists of the designated grievance representatives are kept by local personnel departments.)
-  5. **Check to see if the grievance form identifies a specific contract violation.** If it does not, make note, and get the specifics at the grievance meeting. If no specifics are provided by the end of the meeting, the grievance can be denied as “not identifying a contract violation.” (*The contracts require that the grievant must specify on the grievance form the article and section of the contract that was allegedly violated and the factual situation that gave rise to the grievance.*) Subjects not covered at all by the contract, such as policies, practices, and procedures relating to the Civil Service System, cannot be grieved under the grievance procedure. After a grievance meeting, these matters should be denied as “not identifying a grievable subject under the contract.”

PRELIMINARY INVESTIGATION

Assuming the procedural aspects have been complied with, a preliminary investigation by the supervisor should follow next.










-  1. **Familiarize yourself with the facts and the issue or issues involved.** Read the grievance thoroughly to understand what the employee says happened and why the employee believes the contract was violated. Start a list of questions to clarify any facts or positions.
-  2. **Double check the contract clauses identified in the grievance.** Are they correct? Do they make sense? Note any questions.
-  3. **Check the contract for any other contract provisions not identified in the grievance that you feel may apply to the situation.** Make note of these contract sections so you can bring them up in the grievance meeting.
-  4. **Check policies and rules that apply to the matter being grieved.** Review any applicable policies and work rules including the latest management policy and/or procedure issued on the subject being grieved. Keep copies with the grievance file.
-  5. **Check for practices that may apply to the matter being grieved.** Are there any practices that have been followed on this subject, even if the contract language is not clearly understandable? How long has the practice existed? For what reasons? Is the practice consistent? These questions will be important to *determining whether the practice may be binding.*
-  6. **Schedule the grievance meeting with the union representative within the time required.** Consult *with the union representative's supervisor* to find a mutually agreeable time for the meeting within the time required to hold the meeting under the contract. If you anticipate delays (e.g., vacations, holidays, medical leaves, more time to investigate), then discuss with the union representative the possibility of mutually extending the time limits. If the union refuses to extend time limits, then you may have to deny the grievance for “insufficient time to determine merits.”

FIRST STEP MEETING

Once your preparation is complete, you can conduct the grievance meeting on the scheduled day.




At the meeting, keep in mind that the union representative may also be an employee otherwise under your supervision; however, during the grievance meeting that person should be thought of solely as a representative of the union. You must be mindful that the grievance representative's "job" in this situation is to speak from the union's point of view and advance its position.







The following should be observed while conducting the meeting:

-  1. **Keep the numbers even between union/employee participants and management participants.** Ideally, the meeting should be limited to a total of 4 people. Make sure you have somebody to support you as a witness and note taker.
-  2. **Let the grievant tell his or her story.** Listen carefully and do not interrupt. Ask your questions after the employee and union representative have had their chance to speak.
-  3. **Take good notes.** Neither side can insist on tape recorders or stenographers if the other side objects, and those methods are not recommended. Remember, the objective is to solve problems, not to have people talking for a mechanical record. Notes are sufficient to keep track of important facts and positions, *but make sure you take notes.*
-  4. **Get the facts: names, dates, times, and places.** Ask all the relevant questions you desire, but make them factual, not argumentative. Listen to the answers. Take notes.
-  5. **Don't personalize the issues.** Avoid the use of terms that polarize the parties by serving to reinforce the supervisor-subordinate relationship (i.e., us vs. them). Maintain your composure and concentrate on getting the facts.
-  6. **Don't defend your actions to the grievant or union.** You are not a defendant on trial, you are a decision maker. Emphasize that this is the grievant's opportunity to explain how he/she believes the contract should be interpreted under the circumstances. (On the other hand, if you can comfortably provide additional information about the basis for management's action, do so.)
-  7. **Understand the remedy desired.** Ask the grievant to orally explain the remedy he or she is seeking. This sometimes may be somewhat different from the formal written remedy requested at the time the grievance was filed. Ask the grievant if a different remedy might satisfy the grievance. Listen closely and document with notes.
-  8. **Repeat in your own words the essentials of the issue(s) involved and the remedy desired.** Careful summarization by you at this point is necessary to further narrow and clarify the issue(s) and the remedy sought. Ask the grievant and the union representative whether your summarization is accurate.
-  9. **Do not make a decision at the meeting.** Once the grievant and the union representative agree that you understand the issue and the remedy desired, close the meeting. If they ask you for an immediate decision, state only that you will be considering everything you have heard and will give them an answer later.

MAKING THE DECISION





This is the most important phase of the grievance handling process. You have learned information from this meeting. Do some checking and thinking.

-  1. **Do not make an instant decision.** The supervisor should take the time, often a day or two, to study and consider the matter.
-  2. **Check out the grievant's story.** Talk with others who were involved. Determine if the grievant's story can be verified. Gather any further documents or evidence that pertain to the grievance.
-  3. **Review the contract language again.** *Do you understand it?* If you have questions, seek advice from the personnel department and other knowledgeable management sources.

-  4. **Recheck departmental policy and procedures.** Things may have changed since your first check of the policy and procedures. If there is now a work rule or departmental policy relevant to the grievance, the supervisor should be aware of it prior to making a decision.
-  5. **Seek advice.** Talk to your personnel department or employment relations specialists. Inquire whether there have been *similar grievances* in the past and how they were settled, or whether similar cases have gone to arbitration. Ask about *past practices* that may apply.
-  6. **Make a decision.** Make use of the information you have gathered and make your decision as fairly and as carefully as possible.
-  7. **Give the benefit of doubt to management.** If the grievance is clearly right, some type of relief should be granted, *but for those grievances that are doubtful or borderline*, be conservative and *deny the grievance*. The grievant can always proceed to the next step in the grievance procedure.
-  8. **Check your decision “up the line”.** Once you have made a decision in your own mind, but before you finalize the answer, check your decision with your supervisor. Your decision may have a wide-ranging impact on the total operation. A decision that will cause no problem in *your* area may, if applied universally, create major problems in *another* work area. Remember, as a supervisor, you are part of a management *team*.
-  9. **Be consistent in your decisions.** A supervisor needs to be consistent. If you have “*similar circumstances*,” you should provide “*similar answers*.” Therefore, if the same problem comes up more than once, it should be handled in the same manner, *unless pertinent circumstances have significantly changed*.

ANSWERING THE GRIEVANCE

After a decision has been made, inform the employee and the union of the decision you have reached. This may be accomplished by arranging for a short meeting with the grievant at which you can verbally explain the answer and its rationale. The grievant may have his or her union representative present.

-  1. **Write a simple answer on the grievance form.** Keep your written answers short, concise, and to the point. If you are denying a grievance, simply state: “no contract violation -- grievance denied.” If it is granted, state that the grievance was settled and document the remedy very briefly.
-  2. **Explain your position orally.** Explain the reasoning behind your decision. Do your best to persuade the grievant that you have made a fair and sound decision. Emphasize any precedents or policies that the grievant may not be aware exist.
-  3. **Be professional.** Explain your position, but avoid “pulling rank” or acting in an authoritarian manner. The grievant will only be moved to appeal to the next step. *Remember: grievance procedures are used to solve problems, not create them.*
-  4. **Stick to your decision.** Once you have made a decision, adhere to it. Vacillating will only undercut your credibility. If the grievant disagrees with your decision, simply inform him/her of appeal rights pursuant to the established grievance procedure, and close the meeting.

TIME LIMITS

Processing the grievance through a step must be done within a limited time period. Check the contract for the specific time limits. In a case requiring a great deal of checking and/or investigating, such time limits may serve to constrain the process. If a serious time problem develops, you can request that the grievant agree to an extension. The extension must be in writing.

If you fail to meet the deadline, you as a supervisor or manager lose your right to try and work out the grievance at your step. The grievant will have the right to go directly to the next step of the grievance procedure. You should make every effort to answer the grievance on time.

MAINTAINING A GRIEVANCE FILE

It is important to maintain a grievance file on each grievance. The grievance may be appealed to the next step, or it may go to arbitration, or it may be settled. In any event, the information you learn at the grievance meeting could be important in a later stage of this particular grievance, or in dealing with other, later grievances.

The following information should be kept in the grievance file:

- the written grievance and the answer.
- notes from the grievance meeting.
- who was present at the grievance meeting.
- any documents provided by the grievant or the union representative.
- any records pertinent to the issue(s) of the grievance (e.g., work schedules, overtime records, medical certificates, attendance records, work rules, etc.).
- any policies and procedures pertinent to the issue(s) of the grievance.

THE GRIEVANCE AT HIGHER STEPS

A supervisor or manager who conscientiously follows the points outlined in this handbook should find that his or her decisions are regularly upheld at higher steps in the process. The personnel department should keep the supervisor or manager informed about developments at the higher steps regarding the grievance.

At times, a supervisor's or manager's decision may be reversed at a higher step or the grievance procedure. The supervisor/manager should not take a reversal of grievance personally.

Grievances may be reversed at higher steps for any number of reasons, including:

- Additional facts come to light that were not available at the first step.
- The need to review or change a policy becomes apparent, possibly as a result of this particular grievance.
- The evidence is not strong enough to justify the risk and expense of arbitration.

CONCLUSION

The right to file a grievance is established under the contract. Some grievances may appear to you as frivolous or nuisances; however, it is important to remember that a grievance represents an employee problem and any employee problem deserves to be treated seriously and with respect.

Grievance procedures are used to solve problems. Therefore, approach grievances in a businesslike and efficient manner with the objective of achieving a fair and sound solution to a problem.

Many grievances concern policy set at the agency or departmental level of management. Supervisors are part of management. They represent management and its policies. It is the role of the supervisor to ensure that management policy and work rules are being properly implemented and applied. In handling a grievance, a supervisor is acting on behalf of management in the disposition and processing of the grievance. It is the duty of the supervisor to implement the contract language firmly and fairly, using sound supervisory techniques to prevent disputes that are disruptive to the work environment.

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